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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

UNITED STATES, PETITIONER

v.

THE THAYER-WEST POINT HOTEL COMPANY.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF FOR THE RESPONDENT.

ERNEST J. ELLENWOOD,
JOHN S. SHEDDEN,
Of Counsel for Respondent.

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BRIEF FOR THE RESPONDENT.

Opinion Below.

The Opinion of the Court of Claims (R. 32-38) has not yet been officially reported. The Findings of Fact and Conclusions of Law are set forth in the record (R. 22-32).

Jurisdiction.

The judgment of the Court of Claims was entered on March 4, 1946 (R. 38). The petition for a writ of certiorari was granted on October 14, 1946 (R. 39).

The jurisdiction of this Court is invoked under Section 3(b) of the Act of February 13, 1925, as amended, 28 U. S. C. 288(b).

Question Presented on This Appeal.

Where an Act of Congress provided that, upon the termination of a 50-year lease by the Government, as lessor,

of land on which a hotel was constructed, and operated by the lessee pursuant to the Act, the lessee was to be paid "just compensation for the construction of said hotel, appurtenances and equipment", and where the Government took over possession of the hotel approximately 31 years prior to the expiration of the term of the lease, and terminated the lease, was the Court of Claims empowered to award a sum additional to the "fair and reasonable value" of the hotel, appurtenances and equipment as of the date when the Government took possession, computed at 4% per annum thereon from the date when the Government took the property down to the date of payment "not as interest but as a part of just compensation"?

Statutes Involved.

1. Act of March 30, 1920, 41 Stat. 538, 548, provides:

> "That the Secretary of War is hereby authorized to lease land on the United States Military Reservation at West Point, for a term of not exceeding fifty years, to any corporation, company, or individual, upon which to erect a hotel, and all other necessary buildings in connection therewith in accordance with plans and specifications submitted to and recommended by the Superintendent of the Military Academy, and approved by the Secretary of War. Said lease shall contain such conditions, terms, reservations and covenants, as may be agreed upon and shall also provide for just compensation to the lessees for the construction of said hotel, appurtenances, and equipments, to be paid to said lessees at the termination of said lease."

2. Section 177(a) of the Judicial Code, 28 U. S. C. 284, provides in part as follows:

"(a) No interest shall be allowed on any claim up to the time of the rendition of judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest, * * *."

Statement of the Case.

Acting under authority of the Act of March 30, 1920, the Government on October 17, 1924, by its Secretary of War, entered into a lease for a term of fifty years with Herbert Williams (R. 6-14). As permitted by the express provisions of the lease Williams assigned the lease to The Thayer-West Point Hotel Corporation, a New York Corporation (not the Respondent herein). That corporation caused to be constructed at its own expense on the leased land at West Point, in accordance with the terms of the lease, a hotel known as The Thayer-West Point Hotel, and fully furnished and equipped same.

The corporation occupied the hotel and commenced its operation in June 1926. Final construction as required under the plans was completed in September of 1926 (R. 24).

As this appeal involves the construction of a statute which concerns compensation for this hotel and equipment, it is pertinent to consider the type and character of the property.

The hotel was structurally and economically an unusual, if not unique, type of hotel. A witness for the Government testified that with one exception it is the only hotel of its kind in the country. The land on which the hotel was built is part of the United States Military Reservation at West Point known as the West Point Military Academy. The hotel was designed and built and operated primarily to serve the interests of the United States Army officers and

cadets and their visitors at West Point. It was built according to plans and specifications which were required to be submitted to and recommended by the Superintendent of the Military Academy and approved by the Secretary of War.

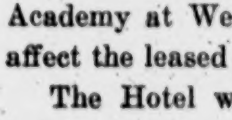
The Government has furnished no money whatsoever for the construction of the hotel, its equipment or its maintenance, but it was built, managed and conducted under the inspection of agents and representatives of the Government.

It was subject at all times to most unusual if not severe restrictions imposed by the Government. For instance, its rates for meals and board had to be approved by the Superintendent at West Point. Discounts from the rates were required to be given by the Hotel to the Board of Visitors and Officers of the United States making tours of inspection, to parents and guardians of cadets, to officers and their dependents on duty at the Post, to officers and dependents connected with athletic teams. It is therefore perceived that the Hotel was required to give discounts to a large proportion of its clientele (R. 31). The insurance placed on the hotel had to be satisfactory to the Superintendent, and the hotel was required to be open every day except at such times as permission to close was given by the Superintendent.

The hotel and buildings were required to be used exclusively for hotel purposes, but if display rooms were maintained, which in large commercial hotels are an important source of revenue, at The Thayer-West Point Hotel such rooms had to be for the display of merc' .ndise for sale to officers and cadets. Water, electricity, ice, sewage and bus transportation are all mentioned in the lease and all regulated more or less by the West Point Superintendent.

Probably the severest restriction affecting the Hotel was the one by which it had to agree to observe "all rules and regulations now established or which may hereafter be established by the Superintendent of the Military Academy at West Point so far as the same apply to or affect the leased premises".[1]

The Hotel was required to keep the "premises, the hotel, appurtenances, and equipment in good repair at all times * * *." The Superintendent or an officer designated by him "shall at any and all times have access to said premises to make such inspection as he may deem necessary" (R. 12, 31).



[illegible] the plans for the construction of the hotel there were unusual requirements imposed by the Government. In addition to 225 sleeping rooms there was a large ballroom and lobby entirely out of proportion to the size of the hotel. From an economic standpoint this would be waste space most of the time. Special suite were built and furnished called the Presidential Suite, the Vice-Presidential Suite, and the Secretary of War Suite (R. 24).

The lease provided that the lessee could not sublet or

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[1] As an illustration of the restraint under which the hotel carried on its operations, an examination of *Kelly as Trustee in Bankruptcy of The Thayer West Point Hotel Corporation* v. *U. S.*, 69 Ct. Cls. 220 is enlightening. In that case this same lease was before the Court of Claims for interpretation at the instance of the old corporation. Kelly as Trustee was claiming an alleged constructive eviction and therefore a termination of the lease. It appeared therein that about a year after the hotel opened for operation, the Superintendent of the Military Academy closed the road to through traffic going through the reservation, which was the regular accessible route to follow in order to reach the hotel, because the traffic on the roadway interfered with the operations of the Academy. The Court of Claims found that this restriction affected the business of the hotel. Nevertheless, the diversion of traffic as ordered by the Superintendent of the Military Academy was authorized and upheld, and constructive eviction was denied.

lease the hotel or any portion thereof, nor assign the lease without the written approval of the Superintendent of the Military Academy (R. 12).

We mention these matters to show that no transient or commercial hotel property was comparable in any way to this property, nor could a transient or commercial hotel be built and operated profitably under such conditions. It is therefore reasonable and proper to assume that these matters were in contemplation of Congress when the Statute was passed authorizing the negotiation of such a lease. Indeed the legislative history of the Act as we shall hereafter show expressly indicates the intention of Congress to provide for these conditions.

In 1925, prior to the completion of the construction of the hotel, the Corporation issued and sold to the public $1,000,000.00 principal amount of its 6½% First Mortgage Bonds to raise funds for the construction and equipment of the hotel. This bond issue was secured by mortgage of the leasehold and the building and personal property at West Point. Later there was also issued by the Corporation and sold $500,000 principal amount of 7% General Mortgage Bonds secured by the same properties as the first mortgage bonds, but subordinate in lien (R. 24).

In 1927 the hotel Corporation made certain defaults under its first mortgage and as a result the mortgage was foreclosed. The leasehold and all the hotel properties were subsequently sold at a mortgage foreclosure sale and bid in by a protective committee of the first mortgage bondholders representing $879,400 face value of the first mortgage bonds. In addition to this amount of bonds, which stood behind the purchase, the committee paid $25,000 in cash upon making its bid at the sale (R. 25).

Thereupon The Thayer-West Point Hotel Company (hereinafter called the "Company"), respondent herein, was organized by the committee of the bondholders as a Delaware corporation, and took over by proper deeds of conveyance the ownership and operation of the leasehold and the hotel property with the consent and approval of the Superintendent of the Military Academy at West Point. The company in order to raise working capital and pay the cash bid at the mortgage foreclosure sale gave its first mortgage for $125,000, and issued to and exchanged with the old first mortgage bondholders of the hotel corporation one $50 6% Income Bond and one share of its Common capital stock for each $100 of the original 6½% First Mortgage Bonds. The result of this transaction was that the entire income bond issue of the Company, amounting to $439,700, and the entire issued and outstanding stock of the Company, amounting to 8,794 shares, are presently outstanding and stand in place of the original $879,400 First Mortgage bonds which came into the foreclosure and reorganization proceedings. The remaining old First Mortgage bondholders holding $120,600 bonds who did not join in the reorganization, were paid proportionately small amounts out of the foreclosure cash bid of $25,000.

The first mortgage of $125,000 is also presently outstanding in the principal amount of $115,000 with interest at 6% unpaid thereon from January 1, 1942 (R. 25-26).

The new Company, Respondent herein, commenced operation and management of the hotel properties in January 1931, and continued down to March 10, 1943. On that date the Government took possession of the hotel and all its properties, appurtenances, and equipment, and commenced immediately the operation and management of the properties, which has continued down to date (R. 27-29). This

came about after an exchange of letters, which were obviously the result of conditions apparently brought about by the war. On January 5, 1943 the Hotel Company wrote the Secretary of War as follows:

"93 Exchange Street,
Portland, Maine.

January 5, 1943.

Attention of Corps of Engineers

Hon. Henry L. Stimson,
Secretary of War,
Washington, D. C.

Dear Sir:

Under the Act approved March 30, 1920 (41 Stat. 548), the Secretary of War, on October 17, 1924, leased a parcel of land on the United States Military Reservation at West Point for a period of fifty years for the purpose of constructing thereon a hotel and all other necessary buildings in accordance with plans to be approved by the Superintendent of the Military Academy. The assigns of the lessee constructed a hotel and necessary buildings known as the Thayer-West Point Hotel, which is owned and operated by the Thayer-West Point Hotel Company.

Due to existing conditions which are beyond the control of the stockholders and directors of The Thayer-West Point Hotel Company, and the military authorities at West Point, and which were not contemplated at the time the said lease was executed, it is now impossible to operate the Hotel as previously conducted. Such conditions will necessarily force a curtailment in operation unsatisfactory to the military authorities at West Point, and perhaps the closing of the Hotel in accordance with the terms of the lease. If the Hotel should fall into the hands of outside interests through the foreclosure of the first mortgage thereon, the bondholders would be deprived of any return on their original investment and the operation of the Hotel would be conducted to the detriment of the Officers, the Cadets and their friends. Under the circumstances the Hotel Company considers it desirable that in order to avoid a curtailment of the operation or a possible closing down of the

hotel, or the operation of the hotel to the detriment of the Officers, the Cadets and others, the properties should be owned and operated by the Government.

The lease provides that it may be cancelled at any time by the Secretary of War should the second party thereto fail to observe all the covenants and conditions of the lease or any of the rules and regulations promulgated by the Superintendent under the said lease, and that the Secretary of War may declare the lease forfeited for such failure and thereupon just compensation shall be made to the second party to said lease or his assigns for the construction of the said Hotel, appurtenances and equipment.

Inasmuch as our holdings and the value thereof depend upon a contract, authorized by and embodied in the lease, it is suggested that the method of cancellation provided for in the lease, if adopted, will protect all parties, and we therefore suggest the following procedure, under the lease, which will result in the acquisition by the Government of the properties in question.

In order that the officers and directors of The Thayer-West Point Hotel Company may fully protect the rights of its stockholders and its bondholders, we are writing to you to inquire if you will write us a letter, stating that in the event default is made by the Company under the provisions of the lease, you will forthwith thereafter declare the lease forfeited and take title to the building erected on the leased property and the appurtenances and equipments therein (except such furniture and furnishings as are supplied by guests for their own use) in accordance with the provisions of the lease to the end that the Company shall be entitled to the just compensation, as provided in the lease. The letter should also indicate that the forfeiture, will not result in any action by the Government other than to effect the conveyance of the Hotel property to the Government and to make just compensation therefor, as provided in the lease.

This action is to be based upon our delivery to the Superintendent at West Point of notice of the default in advance of the time when it will occur, and also upon our deli ry to the Superintendent of a waiver by this Company and by the present holder of the mortgage on the Hotel of notice of any claim made by you of omission or failure growing out of such default,

and a waiver of reasonable opportunity of compliance by the mortgagee to correct such omission or failure of the terms of the lease, and of a further waiver of any time to be given by the Superintendent of the West Point Academy to correct the omissions or failure caused by such default and to comply with any requirements of the Superintendent in that regard.

This communication is not intended and should not be construed as a notice of default on our part. However, it is urgently requested that, with a view to relieving the acute situation which exists with respect to the maintenance and operation of the hotel, consideration be given to the possibility of Government ownership as contemplated by the terms and provisions of the lease.

Your early advice in this matter will be appreciated.

Yours truly,

THE THAYER-WEST POINT HOTEL COMPANY

By PHILLIPS M. PAYSON
PHILLIPS M. PAYSON,
President."

On February 5, 1943 the Secretary of War replied as follows:

"War Department
Washington

Feb. 5, 1943.

The Thayer-West Point Hotel Company
West Point, New York.

Gentlemen:

Receipt is acknowledged of your letter dated January 5, 1943, presenting the situation with respect to the maintenance and operation of the Thayer-West Point Hotel and appurtenances now owned by your Company and located on lands leased from the United States within the United States Military Reservation at West Point.

The lease entered into between your predecessors and the United States pursuant to an Act of Congress approved March 30, 1920 (41 Stat. 548), provides in substance that certain premises owned by the United States are leased for a period of fifty years commencing October 17, 1924, for the purpose of erecting thereon a hotel and other buildings necessary for its operation. The buildings thereon are the property of your Company and upon termination of the lease the buildings become the property of the United States, for which the United States is required to pay just compensation. The lease makes provision for annulment should the lessee fail to observe the covenants and conditions of the lease or the rules and regulations promulgated by the Superintendent of the Military Academy. Before termination of the lease by annulment, the lease provides that due notice must be given to the lessee, mortgagee and trustee of any mortgage, and a reasonable opportunity afforded to comply with the requirements of the United States.

Your letter indicates the necessity for a curtailment of the operation of the hotel by your Company or a possible closing of the hotel. In case of the closing of the hotel, it would be incumbent upon the Government to notify the lessee and other interested parties that such action constitutes a failure to observe the covenants and conditions of the lease and would be a sufficient cause for annulment of the lease. Such notice would of necessity give reasonable opportunity to the parties to comply with the terms and conditions of the lease before an annulment would be effective. If, however, the Hotel Company should notify the War Department that it intended to close the hotel on a given date, and accompanied such notice with waivers from the Company, the mortgagee, trustee of any mortgage and other interested parties, relieving the lessor of the obligation of giving notice and granting a reasonable time for compliance with the terms and conditions of the lease, then it would be the duty of the War Department to take possession of the property upon the date specified.

The statute (41 Stat. 548) provides that upon termination of the lease just compensation must be paid to the owners of the property and it will be necessary for the Government to comply with the statute.

Please be informed, therefore, that if you proceed as you have tentatively outlined in your letter, and forward a notice of default accompanied by proper waivers from all interested parties, it is the intention of the War Department to take the necessary action to declare the lease forfeited under its terms, to take possession of the building and appurtenances, and to institute condemnation proceedings for the purpose of clearing the title to the buildings, appurtenances and equipment, and of determining the just compensation to be paid to the owners in accordance with the statute.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War."

Following the suggestions contained in the Secretary of War's letter, notice of default was given by the Hotel Company dated February 26, 1943. The waivers of notice referred to by the Secretary of War were also given by the Company (R. 29).

On March 10, 1943 the Government gave notice to the guests of the Hotel of the change of ownership and operation from the Hotel Company to the Government, and thereafter and on March 24, 1943 the Secretary of War served a formal notice of annulment of the lease which he stated was "in accordance with the terms and conditions of the aforesaid lease" (R. 30).

This date marked the termination of the lease. It would have not expired under its fifty year term until October 17, 1974.

Shortly thereafter, on April 19, 1943, the Hotel Company wrote the Secretary of War that it had become entitled to just compensation for the construction costs of the hotel, appurtenances and equipment and fixed a tentative

amount "for the purposes of discussion only" in the sum of $2,300,000. On May 19, 1943 the Hotel Company, not having had any reply from the Government, commenced this action in the Court of Claims. The next day, on May 20, 1943, the Government commenced a proceeding in the United States District Court for the Southern District of New York seeking a condemnation of the hotel properties,[2] and on May 21, 1943 at the same time wrote the Hotel Company that the just compensation would have to be determined by the Court (R. 30). The Hotel Company moved in the District Court to stay the condemnation proceedings on the ground that the Court of Claims had acquired prior jurisdiction. The motion was granted and the stay ordered (R. 30). No appeal from this order was taken.

The Judgment of the Court of Claims.

By its finding of fact (No. 27), the Court below found "the fair and reasonable value of the hotel and appurtenances as of March 10, 1943, the date possession of it was taken by the defendant, was $820,682.00." It further found in the same finding that "the fair and reasonable value of the equipment, including furniture and kitchen equipment, on March 10, 1943, was $47,000.00." The Court found that the total of these two values, amounting to $867,682.00 is "fair and reasonable compensation to the plaintiff as of

[2] These proceedings were brought, as alleged in the Government's petition, because it was necessary to acquire the property for military purposes under the authority of the Second War Powers Act approved March 27, 1942 (Public Law 507—77th Congress) and the Act of Congress approved August 18, 1890, 26 Stat. 316, as amended by the Acts of Congress approved July 2nd, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518; 50 U. S. C. Section 177).

March 10, 1943 for construction of the hotel, appurtenances and equipment."[3]

No objection or exception to these findings or to the judgment thereon has been made by the Government or by the Hotel Company.

The Court of Claims then found as a fact in the same finding that, in addition to the said total amount of fair and reasonable compensation as of March 10, 1943, there should be added thereto 4% per annum on the said total amount from March 10, 1943 until the date of payment, and the Court then found as a fact that this additional amount raised "the aggregate value of $867,682 so ascertained and determined to just compensation as of the date of payment".

The Court found this additional amount "not as interest but as a part of just compensation" (R. 31-32).

It is that part of the judgment awarding an additional sum to the date of payment to which the Government now objects and upon which this appeal is solely based.

In effect the Government's principal claim is that this additional amount is "interest" which is prohibited by Section 177 of the Judicial Code.

Summary of Respondent's Argument.

I. The additional amount awarded upon the facts in this case is not interest within the purposes or intention of

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[3] The Court of Claims found that the original cost of constructing the hotel and appurtenances was approximately $1,300,000 and that the cost of reproducing the hotel on March 10, 1943, would have been $1,138,160 not including the cost of landscaping or any allowance for interest during construction or charges for financing. In addition thereto the Court below found that the contract price of the furniture and equipment of the hotel was $296,743.03 of which $87,000 had been paid in connection herewith (R. 30-31).

Section 177 of the Judicial Code. From March 10, 1943 the Government has enjoyed the full use and benefit of respondent's properties while the respondent, completely out of possession,[4] is still incurring expenses in connection therewith and payment has not been made. The respondent is entitled to have the full equivalent of the value of the use of its property by the Government paid contemporaneously at the time when the Government took the property. It is entitled to be put in as good position pecuniarily as if the use of its property had not been taken. This is the fair and reasonable interpretation of the statutory provision authorizing the payment of "just compensation for the construction of the hotel, appurtenances and equipment". The Court of Claims in awarding an additional amount "not as interest but as part of just compensation" simply followed a method of computation approved many times by this Court to determine the full value of the property down to the date of payment.

II. Our right to full compensation to the date of payment does not depend upon whether this is an "eminent domain" case or upon any particular kind of "taking". The Government was under no obligation, contractual or otherwise, to take over this property and business. When it elected to do so, then the statute required it to pay "just compensation for the construction of the hotel, appurtenances and equipment" which fairly and reasonably means compensation to the date of payment.

III. At the time of the enactment of the Statute the words "just compensation" had a definite established mean-

[4]The Government says this is "during the time it would take to compute the amount" (p. 45).

ing of full value to the date of payment. Congress intended to make the lessee whole if and when its property was taken by the Government prior to the expiration of the term of the lease.

IV. The "fair and reasonable" value of the hotel properties on March 10, 1943 is not equivalent to "just compensation for the construction of the hotel, appurtenances and equipment". The Court of Claims properly recognized this distinction. If Congress had intended to provide a measure of damages limited to the "fair and reasonable" value of the hotel properties at the time when the Government took over possession of them, it would not have used the words "just compensation for the construction of the hotel, appurtenances and equipment".

Argument.

I.

The Court of Claims was empowered in fixing "just compensation for the construction of the hotel, appurtenances and equipment" to award an amount which represents the value of the use of the hotel properties from the time when the government took possession down to the time of payment.

Such additional amount is not interest within the purpose and intention of Section 177 of the Judicial Code. Interest is defined as the compensation for the use or forbearance of money. It is due for withholding a debt (33 *Corpus Juris* 178). The Court of Claims in its findings of fact and conclusions of law and judgment has made no award of such interest. It ruled properly that the Hotel

Company should be put in as good position pecuniarily as if the use of its property had not been taken. The Hotel Company was deprived of its property and business on March 10, 1943. Without any interruption whatsoever the Government took over that property and business and has been in complete possession and operation of it since that time. In the meantime the first mortgage of $115,000 remains unpaid with accumulating interest thereon. What compensation does the Company receive for that loss incurred while the Government enjoys the income from the property and payment for it is not made? How can it be reasonably said that compensation to the Company is "just" when the Government takes the Company's property on March 10, 1943, fixes its value as of that date, and then pays for it sometime in the indefinite future. Certainly that kind of compensation is not the equivalent of the use of the property paid contemporaneously with the date of taking, and makes, it seems to us, a travesty of the words "just compensation".

This Court has recognized similar situations in several cases, and, in sustaining or directing a similar award as made by the Court below herein, these cases definitely held that Section 177 of the Judicial Code is no bar.

In *Phelps* v. *United States*, 274 U. S. 341 this Court thoroughly considered the right of the Court of Claims to make an award similar to the instant case. In that case the Court of Claims rendered an award for the value of the use of the pier on which petitioner had a lease and which was taken by the Secretary of War under an Act of Congress. The petitioner vacated the property and the United States took possession. Petitioner contended that to the value of the property found as of the day of taking should

be added such sum as would produce the equivalent of the use of the lease or property, paid contemporaneously, and that interest at a reasonable rate from the date of the taking to the time of payment is a good *measure* of the amount in order to make just compensation. The Court of Claims refused to allow such additional amount. This Court reversed the Court of Claims and held that a judgment in 1926 for the value of the property found in 1918 was not sufficient to constitute just compensation. In this case this Court expressly held that Section 177 of the Judicial Code does not prohibit the inclusion of an additional amount in order to make just compensation, and that such amount is not a claim for interest.

The Government refers in its brief to the fact that the Statute which we are considering and the lease contained no express provision concerning the payment of interest. In *Brooks-Scanlon* v. *U. S.*, 265 U. S. 106; *Liggett & Meyer* v. *U. S.*, 274 U. S. 215; *U. S.* v. *Creek Nation*, 295 U. S. 103; *Shoshone Tribe* v. *U. S.*, 299 U. S. 476, all Court of Claims cases, no mention was made in the Statute under consideration of interest, and yet in all of them this Court held that where property was taken over by the Government and the possession by the Government preceded the payment of compensation, then the owner was entitled to the full equivalent of the value paid contemporaneously. The underlying principle of all these cases, as we read them, is that the additional amount allowed is not interest, but is a method of computing compensation by way of interest in order to give the property owner the full value of his property taken.

This principle is clearly sustained in the decision of this Court in *Waite* v. *U. S.*, 282 U. S. 508. A suit was brought to recover for the unlicensed use of a patented invention. The statute under which the suit was brought provided for

"reasonable and entire compensation for such use." The Court of Claims refused to allow interest to the date of payment upon the sum fixed as damages. This Court reversed and held that "interest should be allowed in order to make the compensation entire."[5] Mr. Justice Holmes referred with approval to *Richmond Screw Anchor Co.* v. *U. S.*, 275 U. S. 331, 343, in which "entire compensation" was defined.

The Government's argument throughout its brief is based on the *assumption* that the award in this case was "interest", as commonly understood.[6] It charged in its petition to this Court for the writ that the Court of Claims "has attempted to create a verbal formula to remove its action from the ambit of Section 177(a) and to place it under rules applicable solely to damage awards appropriate in eminent domain or requisition cases under the Fifth Amendment". The petition furthermore stated that the decision of the Court of Claims herein "underscores a tendency by the Court below to attempt to overcome Section 177(a) and to grant interest whenever in its opinion such interest should be included in its judgment".

The phrase "not as interest but as a part of just compensation" is not a formula invented by the Court of Claims. It has been repeatedly approved in decisions of this Court and in several cases where the Court of Claims

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[5] A similar recent decision is *Marconi Wireless Co.* v. *U. S.*, 99 Ct. Cls. 1.

[6] In *Smythe* v. *U. S.*, 302 U. S. 329, cited by the Government, a Court of Claims case where the United States had redeemed certain of its bonds and suits were brought in the Court of Claims to recover on the interest coupons attached to the bond, the Court reaffirmed the well-known rule that in the absence of contract or statute evincing a contrary intention interest does not run upon claims against the Government. The Court, however, did not have before it any provision requiring an award of "just compensation."

has refused this indentically phrased additional allowance, this Court has reversed that Court and directed that it be made (cases cited *supra*).[7]

The Government argues that the decision of the Court of Claims herein is in direct conflict with the decision of this Court in *U. S.* v. *Goltra*, 312 U. S. 203. So much reliance has been placed by the Government upon this *Goltra* decision that we desire to analyze it in comparison with our case, as we think that the distinguishing facts of the *Goltra* decision have been ignored or passed over too lightly by the Government.

In the first place, Goltra never had a cause of action against the Government until Congress passed a remedial statute eleven years after his alleged cause of action arose. He had prosecuted this cause of action through all the courts, including this Court, without success (*Goltra* v. *Weeks*, 271 U. S. 536). After his defeat Goltra then went to Congress and obtained a special statute conferring jurisdiction on the Court of Claims to determine the "just compensation" to be paid him for the taking of his property, which had been a tortious unauthorized act of an army officer. Now it is observed that Goltra's original claim was, as pointed out in this Court's opinion, an "ordinary" claim for damages. Such a claim even if it had been well founded in the first place would have been barred as to interest by Section 177 of the Judicial Code (*Hooe* v. *U. S.*, 218 U. S. 322).

The special statute under which Goltra ultimately recov-

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[7] An instance in which interest was regarded as an integral part of the principal sum in issue and not within the statutes and decisions exempting the Government is *U. S.* v. *N. Y.*, 160 U. S. 598. This was not a case of taking property but there is a relevant analogy (*U. S.* v. *Highsmith*, 257 Fed. Rep. 401. C. C. A. 1919).

ered was in the nature of a statutory grant and such statutes, as stated in this Court's opinion, are always strictly construed against the grantee. The reason for such a strict construction has been stated to be that "statutes and ordinances embodying such grants are usually drawn by interested parties" (*Russell* v. *Sebastian*, 233 U. S. 195, 205).[8] This Court held in effect that a strict interpretation of the remedial statute invoked by Goltra required a holding that Congress did not intend to award an additional sum of just compensation computed by way of interest covering a period of eleven years. The opinion said:

> "The distinction between property taken under authorization of Congress and property appropriated without such authority has long been recognized. Acts of Government officials in taking property without authorization of Congress confer no right of recovery upon the injured citizen." • • •
>
> "We see no ground to read into this act of grace which was apparently drawn to rectify what Congress felt might be a wrong, an authority to allow interest as a part of just compensation. If interest was to be allowed for so long a period upon an ordinary claim and contrary to established governmental practice, Congress would have so declared."

There had been two other cases of tortious taking at the time of the *Goltra* decision where interest to complete full just compensation had been allowed. They are *U. S.* v. *Creek Nation*, 295 U. S. 103, and *Shoshone Tribe* v. *U. S.*, 299 U. S. 476. But this Court's opinion expressly pointed out that in those cases there had been a ratification by

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[8] Statutory grants are construed strictly in favor of the public. Nothing passes by implication. *Coosaw Co.* v. *So. Carolina*, 144 U. S. 550, 562; *Caldwell* v. *U. S.*, 250 U. S. 14, 20; 59 *Corpus Juris Secundum* 668.

Congressional authority and a confirmation of the tort after the taking.[9]

These salient facts of the *Goltra* case place it entirely apart from the facts of our case. The statute here was not a remedial statute in any sense. It was a mandate definite, clear and precise to the Government authorizing the Government to take over the hotel properties some time in the future either before the expiration of the term of the lease or at the expiration of the term and to pay just compensation therefor. It is based on that authority that the Government took our property and the Secretary of War in his letter in which he gave notice of the taking indicated that he was relying upon our statute (R. 17).

The statute and lease in our case were drawn by the Government, not drawn as in the case of statutory grant, by the recipient, or his friends, of the grant. The drafting of the statute and lease was the work of the Government. If a strict construction is required of the phrase "just compensation for the construction of the hotel, appurtenances and equipment" then on fair legal principles such construction must be in our favor.[10] (17 *Corpus Juris Secundum*, Contracts, Sec. 324.)

There has never been any question about the Government's liability to us, as there was in the *Goltra* case, and

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[9] The Government cites *Viriginia Engineering Company, Inc. vs. U. S.*, 89 Ct. Cls. 457, where interest was allowed in a non-eminent domain case. The Government states that this case was on all fours with the *Goltra* case. It seems to us that the *Virginia* case is not at all like the *Goltra* case in that there had been no tortious taking whatsoever. No appeal was taken from the *Virginia* decision. We think the rules of law expressed by the Court below in that case are applicable to ours.

[10] Before the Court of Claims the Government asserted that the phrase "just compensation for the construction of the hotel, appurtenances and equipment" was not free from ambiguity (p. 172, Government's Brief Ct. Cls.).

we require no remedial statute to support that liability. We had no "ordinary" claim any more than a claim under eminent domain is an "ordinary" claim.

It therefore seems to us that the *Goltra* decision on which the Government leans so heavily is not in point in our case at all.[11] Indeed, as we read the *Goltra* decision the implication is plain that had there not been a tortious taking and had there not been the question of construing a remedial statute to cover a period of eleven years, the additional award by way of interest would have been sustained.

II.

The right to full compensation to the date of payment does not depend upon whether the Government took our property under the power of eminent domain. Nor does it depend upon any particular kind of "taking". The decisive circumstance is that the Government took our property pursuant to and under the authority of an Act of Congress which gave just compensation when the property was taken. There can be no plausible distinction between the just compensation awarded in eminent domain or military requisition cases and the just compensation under our statute.

The Government, adopting the premise that the additional amount awarded by the Court of Claims was strictly "interest", argues that only in eminent domain cases is interest allowed, and that since this is not an eminent domain case the "interest" allowed by the Court below was improper. Two sentences from the Government brief in this connection are significant and indicate, it seems to us,

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[11] *U. S.* v. *North American Company*, 253 U. S. 330, cited frequently in the Government's brief was also a case of tortious taking and was so distinguished in later decisions. (*Jacobs* v. *U. S.*, 290 U. S. 13.)

how thinly drawn the Government's argument is in comparing an "eminent domain" case and our case. They say:

> "Where private property is taken *in invitum* by the Government the Constitution demands that the owner be made whole as of the time he loses use or possession of the property; when payment is deferred interest is necessary to produce the full equivalent of the property's value paid contemporaneously with the taking. But where the Government does not impose its will upon the owner, and he is free to sell his property and to bargain for the terms of its sale, there is neither Constitutional nor policy reason to assure him of this full measure of protection" (p. 13).

In a consideration of this statement by the Government, let it be observed first that the Hotel Company herein was not like the usual property owner and was not "free to sell its property or to bargain for the terms of its sale". It could not assign or transfer the lease without the approval of the Government (R., p. 12). It could do nothing except to seek "just compensation" if, as and when the Government took the property. Until the actual expiration of the 50 year term of the lease the Company had no right to any compensation from the Government under any circumstances unless the Government took its property. Furthermore, there was no obligation or contract or promise on the part of the Government to take over the property if the Hotel Company defaulted *before the expiration of the term of the lease.*[12] The provisions covering the conditions that arose here and under which the Government took the property are explicit (R., 11). They provide that this lease

[12] As further support for this statement it is noted that when the original hotel corporation previously defaulted, the Government did not elect to take possession of the hotel property and terminate the lease (R. 24-26).

"may" be annulled at any time by the Secretary of War should the lessee fail to observe the conditions of the lease, and then the Secretary of War "may" declare the lease forfeited and "thereupon just compensation shall be made to the party of the second part or his assigns for the construction of said hotel, appurtenances and equipment". This all applied to the termination of the lease by an act of taking prior to the expiration of the term.

When the Company wrote to the Secretary of War it did not know whether the Government would take this property or not if it ceased operating the hotel. The term of the lease then had more than 31 years to run. The Company had no assurance or contract that the lease would be *terminated* by the Government and just compensation paid. It was not until the Secretary of War elected to take possession of the hotel properties that the right to just compensation accrued. It is apparent that the Secretary of War treated this "taking" as analogous to an eminent domain case, because he stated in his letter that condemnation proceedings would be brought to determine "the just compensation to be paid to the owners in accordance with the statute" (R., 17), and condemnation proceedings were thereafter commenced by the Government (*supra*, p. 13).[13]

In the Government's petition for a writ herein this statement is made: "Concededly, an award of damages under the Fifth Amendment for a taking of property includes interest from the date of taking if payment be delayed. * * * But the essential element which justifies the use of this measure of damages is the existence of an actual taking".

[13] Before the Court of Claims in this case the Government strongly argued that this was an eminent domain case and that when Congress used the words "just compensation" it must be considered in the absence of a very strong showing of contrary intent, to have used them in the sense of eminent domain (p. 173, Gov. Brief before the Court of Claims).

The Government has stated in its brief that the condemnation proceedings are now moot. (R. 18) They are not moot however as an indication of how the Government, before it reached this Court, interpreted the remedy of just compensation herein. And we believe that our right to full just compensation to the date of payment is not conditional upon the form of remedy.

In *Jacobs* v. *U. S.*, 290 U. S. 13, where the owner brought suit to recover for the taking of his land, this Court reversed the Court below which had refused to allow interest to the date of payment. The Court said:

> "The fact that condemnation proceedings were not instituted and that the right was asserted in suits by the owners did not change the essential nature of their claim. The form of remedy did not qualify the right."

The Court below in its finding of fact found that on March 10, 1943—

> "* * * the Secretary of War for and in behalf of the defendant, acting through its agents and representatives and pursuant to the provisions of the lease, took over possession and occupation and management of the said hotel and all its properties, appurtenances, and equipment, and has ever since continued in possession, management, operation, and control of the same" (R. 29).

When the Secretary of War took possession of our property, the only authority under which he could act in such taking was by virtue of our Statute. Such authority could not be conferred upon him by any letter written by the Hotel Company or by any letter in reply thereto written by him, and the right of election to take the property rested entirely with the Government. There is no question of

right by contract here (*DeLaval* v. *U. S.*, 284 U. S. 61, 66). Our people had no rights whatsoever until possession of our property was taken, and then our rights came not by virtue of any letters or contract with the Secretary of War, but by virtue of an Act of Congress.

We see no justification for the statement in the Government brief that we have "studiously ignored" the actual transactions leading up to our demand for just compensation (R. 46). On the contrary we wish to emphasize them, because they were in actual contemplation of the Government as Lessor and the respondent as Lessee. When the Act was passed it provided for the payment of just compensation upon the "termination" of the lease. That termination had to be necessarily, either at the expiration of the term or prior thereto. The lease expressly provided for a default by the lessee during the term of the lease. But it did not obligate the Government to terminate the lease when the default occurred, and the statement in the Government brief that the default "caused the Secretary of War to annul the agreement" is not accurate (R. 46).

The letters between the respondent and the Secretary of War have been set forth in full in this brief. Our letter stated expressly, "this communication is not intended and should not be construed as a notice of default on our part" (R. 15). We informed the Secretary of War of existing conditions affecting the operation of the hotel which were not anticipated by the parties when the lease was made. In January 1943 when the letter was written it is not difficult to perceive what those conditions were. Our letter was simply an inquiry of the Secretary of War as to what course he would take if we closed the hotel. Would he forfeit the lease "to the end that the company shall be entitled to just compensation as provided in the lease"? (R. 15).

The Secretary of War's reply was prompt (R. 16). He set forth the procedure we were to follow. No compulsion on him is indicated in his letter, but he did say that if we defaulted as outlined by him he would act under the Statute and, as to "just compensation" to be paid to the owners "it will be necessary for the Government to comply with the Statute" (R. 17).

It does not seem to us that our right to "just compensation" as provided by the Statute was intended to rest upon any nice and finely drawn distinction between the taking in an eminent domain case and the taking under the express authority of our Statute. We are in an exactly similar position to the property owners whose property is taken under requisition acts[14] (*Phelps* v. *U. S., supra; Waite* v. *U. S., supra*).

The Court of Claims in its opinion said (R. 38): "Both statute and contract expressly provide for the payment of just compensation. The compensation payable must be no less just than that payable under the Fifth Amendment. There is no plausible distinction."

When Congress by a statute contemplated and provided for the future deprivation of our property by the Government, what is the essential difference between this authority conferred on the Government by this special Statute and the authority of the requisition statutes or the taking contemplated by the Fifth Amendment? What is there to indicate that Congress had in mind any different kind of just compensation to be awarded when and if the Government elected to take our property prior to the expiration of the

[14] In *Kepner* v. *U. S.*, 195 U. S. 100, it is stated that the rule of construction is well settled that language used in a statute which has a settled meaning sanctioned by judicial decisions is presumed to be used in that sense by the legislative body. (*Yankton Sioux Tribe* v. *U. S.*, 272 U. S. 351; 65 Ct. Cls. 427, cert. denied 277 U. S. 607).

term and the kind of just compensation for the taking of the property under any requisition statute or under eminent domain?[15]

III.

The legislative history of the act indicates that Congress intended to make the Lessee whole when its property was taken over by the Government prior to the expiration of the term of the lease.

"Just compensation" is mentioned in four different provisions of this lease. It comes first in connection with the provision relating to the passing of title when the lease comes to an end (R. 10). It provides that title to said building or buildings shall pass at once to the United States "subject to the provisions herein contained for the payment by the United States of America to the party of the second part of just compensation therefor". Another provision covers the termination of the lease at the *expiration* of the term reserved, and provides for "just compensation for the construction of said hotel, appurtenances and equipments" which may *then* be upon the premises (Italics ours) (R. 11). Still another provision provides for just compensation when the lease is declared forfeited by the Secretary of War, as happened in this case, *prior to the expiration* of the term of the lease, and provides that "just compensation shall be made to the party of the second part for the construction of said hotel, appurtenances and equipments" (R. 11). One further provision provides for just

[15] We have examined the many decisions and Attorney General opinions cited in the Government's brief which are based upon the general rule forbidding "interest" against the Government. In our opinion they are not applicable to the facts in the instant case, and for purposes of brevity we have refrained from detailed comment of them. It is noted that the quotation from 17 *Corpus Juris* 716 on page 21 of the Government's brief (footnote) is not complete.

Because it did not say so, we are led irresistably to the conclusion that it did not intend to negative the effect of § 177 (a) in this instance. *Tillson* v. *United States*, *supra*.

We therefore reverse the judgment of the Court of Claims to the extent that it includes an allowance for interest.

compensation in the event that the Government should erect or permit the erection of another hotel at West Point; then the lease may be terminated "and the party of the second part shall thereupon become entitled to just compensation as above provided as of the date of such termination" (R. 12). It will be observed in a consideration of these provisions that there was no obligation to pay the Hotel Company just compensation except at the expiration of the term of the lease. In the instance of a termination prior to the expiration of the term the Government had the option to terminate the lease and thus bring into effect the payment of just compensation to the Hotel Company.

It is permissible in an interpretation of an Act of Congress to refer to the reports of a Committee including the bill as introduced, changes made in the frame of the bill in the course of its passage, and statements made by the Committee in charge of it (*U. S.* v. *St. Paul M. & N. Railway Company*, 247 U. S. 310, 318).

The Act of Congress herein was not the result of hasty legislation. The question of constructing a hotel at West Point was before Congress for considerably over a year. The first Statute passed on March 4, 1919 (40 Stat. 1348) authorized the Secretary of War to allow the erection at West Point of a hotel and provided that the corporation, company, or individual that erected such hotel would "enjoy the revenue therefrom for a period of fifty years; after which time said property shall become the property of the United States". Congress found that nobody would build a hotel under this Statute, and then passed the Act of March 30, 1920 which for the first time provided for "just compensation" to be paid to the lessee "for the construction of said hotel, appurtenances and equipments". Thus we see that Congress had to offer "just compensation" to a lessee in order to persuade private capital to con-

struct and operate the kind of hotel which was desired for governmental purposes.

An examination of the debates that occurred in Congress in February 1919 shows clearly not only the desire of the Government but also the necessity of having a hotel at West Point to furnish services and facilities required by the Government, its officers and agents at that military reservation (65th Congress, 3rd Session, Report No. 1019).

In February 1920 a new amendatory statute came before the House in which the provision of just compensation for the construction, etc. of the hotel was inserted for the first time (Congressional Record Vol. 59, pp. 3031-3032). The discussion that took place then is quoted in part on page 34 of the Government's brief herein. It will be observed in the statement of one of the Congressmen that the right of election to the Government to take the property was an important factor and that the legislators were recognizing the necessity of awarding "an equity to investors which will recompense them for the sum invested".

The burdensome regulations which were expected to be imposed by the Government upon the lessee were referred to in these discussions and it was recognized that a special or unusual compensation would have to be given to attract a builder and lessee. It is also noted that the Government contemplated the possibility of wanting to take back the hotel at the end of 15 or 20 years, which was in fact exactly what took place. The hotel was not a "money proposition". It was the opposite from a "commercial speculation" (Congressional Record, Vol. 57, pp. 2672-2674). Again it was recognized in the Congressional discussions that there would be "no certainty of a more or less fixed income on the part of the hotel man" and that there was nothing to "tempt anybody to put any money in such a venture unless there be something like a liberal concession on the part

of the Government" (Congressional Record, Vol. 59, pp. 3031-3032; 66th Congress, February 1920).

Certain Senators questioned the meaning of the clause providing for the acceptance of the title by the Secretary of War at any time which was contained in the first statute enacted (66th Congress, Second Session, Vol. 55, p. 3672). As a result, in a Committee report the proposed statute was drafted in exactly the same phraseology as the statute which was finally adopted and acted upon herein (66th Congress, Second Session, Report No. 154, March 19, 1920).

A consideration of the whole legislative history of the Act leads to the reasonable conclusion that when Congress used the words "just compensation to the lessees for the construction of said hotel, appurtenances and equipments" it intended a form of compensation which would constitute full and complete payment to the lessee when it was deprived of its property. Had Congress intended any other form of compensation it would have been a simple matter to have provided expressly for it.

The Government's brief presents what it calls the concept of "just compensation" prevailing in 1920, when our Act was passed. It is argued on the basis of this concept that Congress could not have intended that "interest" be paid as a part of just compensation because such "interest" was not awarded by this Court until after 1920.

This argument might be more plausible if it were not for the decisions of this Court in *Waite* v. *U. S.*, 282 U. S. 508; *Yankton Sioux Tribe* v. *U. S.*, 272 U. S. 351; *U. S.* v. *Rogers*, 257 Fed. Rep. 397, aff'd 255 U. S. 163; *U. S.* v. *Sargent*, 162 Fed. Rep. (C. C. A.) 81.[16] All these decisions

[16] Other decisions are *Seaboard Air Line* v. *U. S.*, 261 U. S. 299; *Jacobs* v. *U. S.*, 290 U. S. 13; *DeLaval* v. *U. S.*, 284 U. S. 61. A statement of the principles involved is found in 20 *Corpus Juris*, Eminent Domain, 806.

concerned and related to statutes which were passed by Congress prior to 1920. In all of them the Court supported the award of interest as a part of just compensation. It seems strange to us that the concept of just compensation as evolved in the Government's brief herein was not successfully invoked in any of those cases.

It is not our contention that "just compensation" are words of art, as asserted in the Government's brief. Our position is that the words "just compensation for the construction of the hotel, appurtenances and equipment" were reasonably intended to mean full and complete compensation to the date of payment. The Government's brief gives no effect whatsoever to the phrase "for the construction of the hotel" etc. It treats that language as surplusage or ignores it entirely. But the rule is that a statute is to be construed, if possible, so that no clause, sentence or word shall be superfluous, void or insignificant, giving to all words used their proper signification and effect (*Montclair Twp.* v. *Ramsdell*, 107 U. S. 147; *U. S.* v. *Lexington Co.*, 232 U. S. 399). It cannot be presumed that Congress intended that these words should have no meaning.

The Government refers in its brief to "just compensation" applying to damage cases, public utility cases and others. We are not concerned here with "just compensation" alone or with the facts of those cases (59 *Corpus Juris*, Statutes, p. 995). The way was open for Congress to fix any established method of compensation it wished. It could have provided for the fair and reasonable value of the properties on the day when the lease was terminated, or when the Government took possession which is what the Government is contending for here. But it does not seem reasonable to us that Congress would have employed the phraseology of the lease if it had intended such a simple formula.

In *Monongahela Navigation Co.* v. *U. S.*, 148 U. S. 312 (1892) this Court considered at some length the meaning of "just compensation" under a statute passed in 1888, and held that the compensation must be a full and perfect equivalent for the property taken. It may be presumed that the "concept" of just compensation set forth in this decision might well have been in contemplation of Congress when it passed our Act in 1920.

In *Jacobs* v. *U. S.*, 290 U. S. 13 this Court considered the concept of just compensation in words pertinent to our case, as follows:

> "The concept of just compensation is comprehensive and includes all elements and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation. The owner is not limited to value of the property at the time of taking; he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking."

IV.

The Court of Claims was authorized by statute to find "just compensation for the construction of the hotel, appurtenances and equipment". A finding of the "fair and reasonable value" of the hotel property is not a finding pursuant to the statute as the Court below properly held.

The Government has accepted without objection a finding of fact of the Court below that the fair and reasonable value of the hotel properties as of March 10, 1943 was $867,682. It argues in effect that this is the total recovery that can be had. It must follow, therefore, from its argument that the fair and reasonable value on March 10, 1943

is synonymous with "just compensation for the construction of the hotel buildings and equipment". We find nothing in the Statute or lease to justify this assumption.

The actual termination of the lease as a matter of fact did not take place until March 24, 1943 when the Secretary of War served notice of annulment (R. 29) and it was not until then that title passed to the Government subject to the payment to the lessee. The Court of Claims was not limited to a finding of fair and reasonable value as of March 10, 1943.

The Government contends, in effect, that all value that resulted from the possession and operation of this hotel property and business after March 10, 1943 disappeared immediately, so far as Respondent is concerned, when the properties were taken by the Government; that it makes no difference when Respondent is paid for its properties or how much the Government is profiting therefrom; that the fair and reasonable value on March 10, 1943 which concededly does not include anything for the use of our property is the sole measure of just compensation to us.

We do not think this is what was intended by Congress, or what is meant in law and in equity to be "just compensation".

Conclusion.

For the foregoing reasons it is respectfully submitted that the judgment below should be affirmed in all respects.

December 1946.

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SUPREME COURT OF THE UNITED STATES

No. 106.—October Term, 1946.

United States, Petitioner, v. The Thayer-West Point Hotel Company.	On Writ of Certiorari to the Court of Claims.

[January 20, 1947.]

Mr. Justice Murphy delivered the opinion of the Court.

The decision here turns upon the power of the Court of Claims, in light of § 177 (a) of the Judicial Code,[1] to include interest in its award of "just compensation" to a lessee for the construction of a hotel and other buildings pursuant to the provisions of the Act of March 30, 1920.[2]

The Act of March 30, 1920, authorizes the Secretary of War to lease land on the United States Military Reservation at West Point, N. Y., to any person for a term not exceeding 50 years upon which to erect a hotel and other necessary buildings in connection therewith. The lease is to contain such conditions, terms, reservations and covenants as may be agreed upon and is to provide "for just compensation to the lessees for the construction of said hotel, appurtenances, and equipments, to be paid to said lessees at the termination of said lease."

On October 17, 1924, the Secretary of War duly made a lease under this Act to one Williams for a period of 50 years. The lease provided, among other things, that it might be canceled at any time by the Secretary if the lessee should fail to observe all the covenants and conditions in the lease. One of the covenants was that the lessee was to "keep the said hotel open for business every day during the continuance of this lease, except at such times as per-

[1] 28 U. S. C. § 284 (a).

[2] 41 Stat. 538, 548.

mission to close may be given in writing by the Superintendent, U. S. M. A." Upon a cancellation of the lease, "just compensation" was to be paid to the lessee for the construction of the hotel, appurtenances and equipment, and title thereto was to pass at once to the United States. Similar provisions were made in connection with the termination of the lease on the expiration of the 50-year term. The lease also set forth numerous restrictions and requirements as to the operation of the hotel—such restrictions and requirements being primarily for the benefit of the Military Academy.

The lease was assigned to a corporation and a hotel and other buildings were subsequently erected. Through a series of events which need not be detailed here, the respondent took over the leasehold and the hotel properties in 1930 with the approval of the Superintendent of the Military Academy. Respondent began operating the hotel on January 1, 1931, and continued under the terms of the lease until March 10, 1943.

On January 5, 1943, respondent wrote to the Secretary of War that conditions then existing made continued operation of the hotel impossible and that to avoid a curtailment of operations or a closing down of the hotel the properties should be owned and operated by the Government." It was accordingly suggested that the Secretary declare the lease forfeited upon the closing of the hotel by respondent, a default contemplated by the lease. The Secretary agreed to this proposal. The respondent then gave notice of its intention to close the hotel on the morning of March 10, 1943. The agents of the Secretary immediately took over the possession, management and operation of the hotel on March 10 and shortly thereafter the Secretary declared the lease annulled.

The parties were unable to agree on the amount of "just compensation" due under the lease. Respondent then brought this suit in the Court of Claims, praying for a

judgment in the sum of $1,932,000. That court found that the "total of just compensation to the plaintiff for construction of the hotel, its appurtenances, and equipments, is therefore $867,382, as of March 10, 1943." 64 F. Supp. 565, 568. The court then added interest at the rate of 4% per annum from March 10, 1943, to the date of payment as "additional allowance to make compensation a just one as of the date of payment." The sole question before us concerns the propriety of adding the 4% interest from March 10, 1943.

The pertinent part of § 177 (a) of the Judicial Code provides that "No interest shall be allowed on any claim up to the time of the rendition of judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest, . . ." Section 177 (a) thus embodies the traditional rule that interest cannot be recovered against the United States upon unpaid accounts or claims in the absence of an express provision to the contrary in a relevant statute or contract. *Tillson* v. *United States*, 100 U. S. 43, 47; *United States v. North American Co.*, 253 U. S. 330, 336; *United States* v. *Goltra*, 312 U. S. 203, 207. This rule is inapplicable, however, where the United States takes property under its power of eminent domain; in such cases it has consistently been held that the Fifth Amendment's reference to "just compensation" entitles the property owner to receive interest from the date of the taking to the date of payment as a part of his just compensation. *Seaboard Air Line Ry.* v. *United States*, 261 U. S. 299, 306; *Brooks-Scanlon Corp.* v. *United States*, 265 U. S. 106, 123; *Phelps* v. *United States*, 274 U. S. 341, 344.

Since it is clear in the instant case that the United States did not exercise its power of eminent domain and that there was no taking of the hotel properties in the legal sense, we can put to one side the eminent domain situation. There is nothing more here than an ordinary

contractual relationship between the United States and the respondent. That relationship was voluntarily entered into by respondent's predecessor and was severed at respondent's suggestion. The Government's liability to pay for the construction of the hotel properties was fixed by the Act of March 30, 1920, and by the lease, not by the Constitution. The sole issue thus becomes whether there is any express provision in the Act or in the lease permitting the recovery of interest under the circumstances. Only if there is such a provision can respondent avoid the traditional rule set forth in § 177 (a).

Respondent's claim in this respect rests upon the references in the Act and in the lease to the payment of "just compensation" for the construction of the hotel, appurtenances and equipment. "Just compensation," it is said, is to be given the same meaning here as in the case of a taking under the power of eminent domain, thereby entitling respondent to the full value of the properties down to the date of payment. From this viewpoint, the Court of Claims could use interest at the rate of 4% as the measure of the value of the use of the hotel properties from the time when the Government took possession on March 10, 1943, to the time of payment and include such interest as a component part of just compensation. The conclusion is reached that the term "just compensation," as used in the Act and in the lease, constitutes an express provision for interest so that the bar of § 177 (a) is removed. We cannot agree.

The fact that "just compensation" includes interest in the eminent domain setting does not necessarily mean that the term must be given the same scope in other situations. *United States* v. *Goltra, supra.* It may or it may not imply an obligation to pay interest. For example, interest conceivably may not be contemplated where the term refers to compensatory damages for a tort or a breach of contract, or where it has reference to the price to be paid

for the exchange or sale of property at a future date. Hence, in the absence of constitutional connotations, "just compensation" is not a term of art so far as interest is concerned. The inclusion or exclusion of interest depends upon other contractual provisions, the intention of the parties and the circumstances surrounding the use of the term.

But in order to override the historical rule codified in § 177 (a), something more is necessary than an equivocal use of the term "just compensation." It is not enough that the term might be construed to include the payment of interest. As § 177 (a) itself indicates, there must be a provision in the contract "expressly stipulating for the payment of interest." That provision must be affirmative, clear-cut, unambiguous; and an unexpressed intention by the parties that the term "just compensation" be construed to include interest is insufficient. Likewise, where a statute is relied upon to overcome the force of § 177 (a), the intention of Congress to permit the recovery of interest must be expressly and specifically set forth in the statute. *Tillson* v. *United States, supra,* 46; *United States ex rel. Angarica* v. *Bayard,* 127 U. S. 251, 260. Mere use of the term "just compensation," without more, is no substitute for an express provision for interest.

Here neither the Act of March 30, 1920, nor the lease under which respondent operated contains an express provision for the payment of interest, either in addition to or as a part of the "just compensation" to be paid to respondent. If the United States had desired to provide by statute or to contract in the lease for the payment of interest it would have been easy to have said so in express terms.[3]

[3] Congress has expressly provided for the payment of interest in other instances. See Judicial Code, § 177 (b), 28 U. S. C. § 284 (b); Contract Settlement Act of 1944, 58 Stat. 649, 654; § 6 (f), 41 U. S. C. Supp. V, § 106 (f).